Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 13,706 306

ARROW LINES, INC., a Corporation
Petitioner,

VS.

BARBARA BRAMMER and
DAVID BRAMMER
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Brief for Barbara Brammer and David Brammer
In Opposition

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FRANKLIN PRINTING CO.

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No. 13,706

ARROW LINES, INC., a Corporation

Petitioner,

VS.

BARBARA BRAMMER and
DAVID BRAMMER

Respondents

Opposition Brief for Barbara Brammer and David Brammer, *Respondents*

In this brief, references will be made to the respondents as "Barbara Brammer" and "David Brammer"; references to petitioner will be to ""Arrow Lines"; references will be made to Myron J. Bazile, owner of the tractor trailer, as "Bazile", and to Dallas B. Whitaker, its driver, as "Whitaker".

QUESTIONS PRESENTED

1. Was Barbara Brammer guilty of contributory negligence which as a matter of law precluded recovery by her and David Brammer, her husband?

2. Was Arrow Lines legally liable for the actions of Whitaker, driver of the tractor-trailer that collided with the Brammer automobile?

3. Was the refusal of Arrow Lines' Request for Charge No. 1, if made, reversible error?

STATEMENT OF THE CASE

(a) Statement of Facts

At approximately 12:00 o'clock midnight on the 22nd day of November, 1964, a tractor and trailer driven by Dallas B. Whitaker, now deceased, and owned by Myron J. Bazile, while proceeding east on U. S. Route 60, at the intersection of said Route with Wayne Street, in the City of Huntington, West Virginia, collided with an automobile being driven in a northeasterly direction through the intersection by Barbara Brammer, and which vehicle was owned by David Brammer, her husband.

The driver was alone in the tractor and trailer. Mrs. Linda Johnson, a friend of the Brammers, was riding in the front seat of the car beside Barbara Brammer.

The collision occurred in the intersection of U. S. Route No. 60 and Wayne Street, (at which all traffic is controlled by a traffic signal light) approximately opposite a drive-in restaurant known as "Long's Parkette". Present near the scene and witnesses to the collision were employees of the drive-in and a City Police Officer.

After the collision, driver Whitaker stated to investigating officers that he was a substitute driver hauling a cargo of frozen turkey into West Virginia for Arrow Lines; that the tractor and trailer were owned by Bazile; that he was not familiar with the road and that he did not see the traffic signal light at the intersection prior to the collision.

The tractor-trailer was traveling into Huntington, West Virginia, with a cargo of frozen turkey. Arrow Lines

was the holder of a permit to haul such a commodity within West Virginia from the Public Service Commission of the State of West Virginia.

Driver Whitaker, as had been his practice previously for Bazile, for and on behalf of Bazile, and in the latter's name, executed a written lease for the rig for a term from November 19, 1964, to November 19, 1965, with Arrow Lines to pay Bazile 85% of the gross revenue on all loads to be hauled; that cargo and destinations were to be designated by Arrow Lines; that Bazile was to haul ICC exempt commodities or ICC non-exempt commodities with ICC permits; that Arrow Lines had the right to approve the driver; that Arrow Lines would receive all revenues from hauling and disburse the same, and that Arrow Lines would carry public liability insurance on the operation.

Driver Whitaker was directed to and did haul cargo pursuant to the lease agreement. A percentage of the gross revenue received by it was subsequntly paid to Bazil by Arrow Lines and Arrow Lines carried the public liability insurance coverage for the operation called for by the lease. The collision itself was investigated by the insurer of Arrow Lines, and the claim of Linda Johnson paid by it. After this action was instituted, counsel for Arrow Lines appeared at and prevented plaintiffs from taking depositions herein, although Arrow Lines was not then a party to this action.

Immediately after the collision, David Brammer called William (Bill) Ferguson, an employee of Arrow Lines, and was advised by him that the cargo of frozen turkey was being hauled for Arrow Lines; that the damage would be taken care of and dispatcher Ferguson referred the Brammers to the insurer for Arrow Lines, whose Huntington representative sought to negotiate a settlement direct with the Brammers.

(b) Statement of Trial Proceedings

This action was instituted by counsel for Barbara Brammer and David Brammer at a time when limited information was available from the police report of the collision and the facts as to the registration records of the tractor and the trailer and its operation were vague and uncertain.

Pursuant to the Civil Rules of Procedure, the Brammers, as plaintiffs, immediately tried to depose Joseph W. Mudd and Edward G. Smith, both of whom had participated in an investigation of the collision and whom counsel for the Brammers knew had obtained written statements concerning the collision from the driver of the tractor and trailer, but the taking of such deposition was prevented by Arrow Lines' counsel, C. Robert Schaub and his associate, although at the times the taking of such depositions were attempted, Mr. Schaub and his associate were neither counsel for any party to this action nor counsel for Joseph W. Mudd or Edward G. Smith.

As soon as counsel for the Brammers learned that the said Mr. Schaub was in fact representing Arrow Lines, and that the settlement of a claim for damages of Mrs. Linda Johnson, the passenger in the vehicle driven by Barbara Brammer, had been made by payment of a draft to her from the insurance company which was insurer of Arrow Lines, an Amended Complaint was filed making Arrow Lines a party defendant to this action.

By interrogatories, depositions and request for admissions by counsel, the Brammers overcame the initial obstructive tactics of counsel for Arrow Lines and the evidentiary limitations imposed on the Brammers as a result of the death of the driver, the negligent operation of the tractor and trailer was established and the crucial issues for the jury were as to contributory negligence of

Barbara Brammer and the amount of damages, if any, which each of the Brammers was entitled to recover. By stipulation, the issue as to the imputability of liability for the tort of the driver of the tractor and trailer resulting was thereafter to be and was determined adversely to Arrow Lines by the trial Court upon the pleadings and evidence.

ARGUMENT

1. BARBARA BRAMMER WAS NOT GUILTY OF CONTRIBUTORY NEGLIGENCE PROXIMATELY CONTRIBUTING TO THE COLLISION.

The contention of Arrow Lines is that Barbara Brammer was contributory negligent because she failed to look concerning an open and obvious danger. (Petitioner's Petition page 8).

In the context of the Petition, petitioner really means that Barbara Brammer failed to look often enough or continuously, but looked sufficiently to ascertain the existence of a known danger.

By positive evidence of the Brammers and their witnesses, it was established that Barbara Brammer:

(a) Stopped her automobile south of the intersection of U. S. Route 60 and Wayne Street in compliance with the red traffic control signal light controlling traffic heading north toward U. S. Route No. 60;

(b) Looked to the west on U. S. Route No. 60 and several times at the east bound traffic on U. S. Route No. 60;

(c) Observed on several occasions the tractor and trailer coming east on U. S. Route No. 60 toward the intersection;

(d) Waited for the traffic control signal light to change to green for traffic coming into the intersection from Wayne Street;

(e) Observed the traffic control signal light change to green for her vehicle;

(f) Assumed the driver of the tractor and trailer driving east toward the intersection would obey the red traffic control signal light and stop his vehicle west of the intersection;

(g) Entered the intersection after the traffic control signal light turned green for her vehicle and before the tractor and trailer entered into it;

(h) Was struck by the tractor and trailer thereafter entering into the intersection in violation of the red traffic control signal light.

One is not required to anticipate heedlessness in another, has the right to assume that another will act with care and if injured as a result of that assumption is not guilty of contributory negligence, and it was not negligent on the part of plaintiff Barbara Brammer to fail to look out for the possible omission by the driver of the tractor and trailer of his duty to stop his vehicle for the red traffic control signal light. *Ritter v. Hicks*, 102 W. Va. 541, 135 S. E. 601 (1926); 13 M. J. 543 "Negligence".

The failure to anticipate the omission of reasonable care on the part of another driver in the operation of his vehicle does not render a person contributory negligent. One is not required to know he is absolutely safe before taking any given course of action, but is required merely to exercise ordinary care to avoid a collision, that is to say, such care as a reasonable prudent person would

exercise under the circumstances. *Sewell v. Lawson*, 115 W. Va. 527, 177 S. E. 293 (1934).

In *Moore v. Skyline Cab, Inc.*, 59 S. E. 2d 437 (1950) cited in brief by petitioner, the collision occurred in the center of an intersection, where traffic was controlled by applicable law and not by a traffic control signal light. Plaintiff's decedent was held to be guilty of contributory negligence as a matter of law, but on clear evidence of excessive speed by plaintiff's decedent and his failure to stop before entering the intersection. The *Moore* case has been cited by our West Virginia Court on three (3) occasions, but essentially for the proposition that the violation of ordinances or statutes is itself prima facie negligence. *Costello v. City of Wheeling*, 117 S. E. 2d 513, 517 (1960); *Payne v. Kinder*, 127 S. E. 2d 720, 739 (1962); *Barnaik v. Grossman*, 93 S. E. 2d 49, 53, (1956).

The only evidence of violation of ordinances or statutes in this case is that the driver of the tractor and trailer did not see and ran the red traffic control light. In the *Costello* case, our Court stated the general rule that if the material facts are not in dispute and a reasonable man can draw but one conclusion from them contributory negligence is a question of law for the Court. However, at page 517, the Court noted that issues of primary negligence, contributory negligence and proximate cause are questions for jury determination unless there is no evidence upon which to found a verdict for a plaintiff, or the conflicting evidence clearly preponderates in favor of the defendant. In the *Payne* case, at page 739, the Court stated that when a case has been tried and questions of fact arising in it have been submitted to the jury and a verdict has been fairly rendered and the trial court has committed no error of law, the verdict will not be disturbed unless manifest wrong or injury has been done or it clearly appears that the verdict

is contrary to the weight of the evidence or that it is without any evidence to support it.

It is only by inference that it can be stated that the tractor and trailer was an open and obvious danger as it proceeded east on U. S. Route No. 60. Barbara Brammer would have had to assume that the driver of the tractor and trailer would not obey the red traffic control signal light, and under the undisputed facts and circumstances of the case, she was not required by law to make such assumption, either at a time when the tractor and trailer was 750 feet away, 400 feet away, or at anytime prior to the time it proceeded into the intersection in violation of the red traffic signal light.

A choice of inferences has been resolved by the verdict of the jury and the affirmation of the District Court and Court of Appeals.

This Court has said that:

> "whenever facts are in dispute or the evidence is such that fair-minded men may draw different inferences, a measure of speculation and conjecture is required on the part of those whose duty it is to settle the dispute by choosing what seems to them to be the most reasonable inference." *Lavender v. Kurn*, 327 U. S. 645, 66 S. Ct. 740, 90 L. Ed. 916 (1946).

In *Sayre v. Shields*, Va., 1968, 164 S. E. 2d 665, cited by petitioner, this Court on appeal sustained the action of the trial court in setting aside a jury verdict for plaintiff because of plaintiff's contributory negligence under applicable Virginia law, but in that case the collision giving rise to the action against defendant by plaintiff occurred at an intersection not controlled by a traffic control signal light and plaintiff at no time prior to impact saw the defendant's vehicle. No analogy whatever can exist in the *Sayre* case originating in Virginia

and controlled by Virginia law, where the Court affirms the action of the trial court in directing a verdict on the issue of contributory negligence of plaintiff under entirely different facts and circumstances. The total failure to keep a lookout to an existing danger is in sharp contrast to the case now before the Court where Barbara Brammer kept a lookout and the danger arose only when the driver of the tractor and trailer failed to stop for the red traffic control signal light. This issue would probably have been resolved in favor of plaintiff as a matter of law had C. Robert Schaub and his associate not improperly intervened in this action and prevented the taking of depositions of Joseph W. Mudd and Edward G. Smith, at a time when he and his associate was not counsel of record for any party to the action and did not represent the parties sought to be deposed or their employer.

2. THE NEGLIGENT ACTION OF DRIVER WHITAKER IN CAUSING THE COLLISION, IS IMPUTABLE AS A MATTER OF LAW TO ARROW LINES.

(a) THE NON-DELEGABLE DUTY AND LIABILITY FOR TORT OF ARROW LINES EXISTS FOR CAUSING CARGO TO BE MOVED IN INTERSTATE COMMERCE;

(b) THE NON-DELEGABLE DUTY AND LIABILITY FOR TORT OF ARROW LINES EXISTS FOR CAUSING CARGO TO BE MOVED IN COMMERCE IN THE STATE OF WEST VIRGINIA;

(c) THE LIABILITY OF ARROW LINES FOR THE NEGLIGENCE OF DRIVER WHITAKER EXISTS BECAUSE HE COMMITTED AN ACT OF NEGLIGENCE WHILE ACTING AS ITS BORROWED SERVANT AND AGENT.

In *War Emergency Co-Op Association v. Widenhouse*, 169 F. 2d 403 (4th Cir., 1948), the Court held that no lease agreement between the party causing the goods to be moved in interstate commerce and its purported independnt contractor will free the party causing the goods to be so moved from liability for the negligence of the driver of the independent contractor under the lease. Noting that members of the public might be deprived of safeguards imposed upon the party causing the cargo to be moved in interstate commerce if such party were permitted to employ irresponsible persons as independent contractors, that Court refused to permit the lessee to escape liability despite the provisions of the lease stating the lessee to be immune from liability of the lessor or his agents.

In *Hodges v. Johnson*, 52 Fed. Supp. 488 (Va., 1943), the Court concluded that the owner of the truck, as the employer of the driver, having the supervision and control of the operation, was liable for the driver's negligence; that although the owner of the vehicle was an independent contractor, and there would normally be no liability upon the lessee from the owner for the negligence of the owner's driver, it is an exception to the general rule that the employer of the independent contractor is not liable, and any lease arrangement of a tractor and trailer moving in interstate commerce makes the lessor and the lessee jointly and severally liable for the negligence of the driver of the truck. In referring to the *Restatement of the Law of Torts*, page 1129, Section 428, the Court stated that the operation of a tractor and trailer is an activity involving an unreasonable risk of harm to others; that it is fraught with great danger to the traveling public; that all the states in the union have enacted comprehensive regulatory laws governing the operation of such transportation; that the Congress of the United States of America, by and through the Interstate Commerce Commission, has regu-

lated all such shipments; that a primary purpose of such regulation is to protect the public traveling upon the highways; that public policy requires that where any corporation is organized for the purpose of discharging certain functions for the benefit of the public, it cannot delegate these functions to another corporation or an individual and escape responsibilities for injuries caused by non-performance of such duties, which by law is attached to the exercise of such a privilege.

In *Louis v. Youngeren and Sims*, 133 N. E. 2d 696 (Ill., 1956), both lessor and lessee were held liable because the lessor loaned his employee to the lessee under such a lease agreement that each of them had such duties and rights incident to the lease agreement as would preclude either from escaping liability for negligence of the driver. The Court also noted that when a tort is committed by an agent or employee in the course of his employment and while pursuing his employer's business, the employer will be liable for any damages resulting from such tort, although it is done without the employer's knowledge or consent, unless the wrongful act is a wrongful departure from such employment or business.

The ordinary and customary practices and actions of the trade and of these parties in the trucking business apply in determining the course and scope of employment here, and evidence of the existence of public liability insurance is admissible and relevant in an accident. *Orgel v. McCurdy*, 8 F. R. D., 585 (S.D.N.Y., 1948).

Where, as here, a commercial motor truck bearing the name and carrying the information as to I.C.C. permit numbers and is carrying cargo upon the highway as it is authorized to do, and while so doing it collides with another vehicle, a presumption arises not only that such truck belonged to the one whose name and markings it

purports to bear, but also that it was being operated in its business at the time of the collision. *McDougall v. Glenn Cartage Co.*, 159 Ohio St. 522; 160 N. E. 2d 266 (1959).

Part II of the Interstate Commerce Commission Act (49 U.S.C.A. Section 301 et. seq.) provides extensive regulation for interstate transportation of goods and subjects to regulation anyone who undertakes to transport such goods, whether they be carrier, freight forwarder, broker, etc., and whether such persons so participate via lease or other arrangement.

Certain commodities are exempt from many regulations under the Interstate Commerce Act. Frozen poultry is so exempt. (40 U.S.C.A. 303). However, various regulatory provisions are still applicable to persons who are causing to be transported such cargo in interstate commerce. Among such regulations are regulations pertaining to lease arrangements for non-owned transportation equipment so used. Such a lease must be in writing and signed by the parties, specify the duration of the lease, designate the compensation to be paid by the lessee. A copy of such lease shall be carried in the vehicle covered under the lease. The lessee must have full direction and control of such vehicle. The lessee is fully responsible for the opration of such vehicle, as if the lessee is the owner of the vehicle itself. (49 U.S.C.A. 304(e), 49 C.F.R. 207.4).

Where the lessor and lessee of a tractor and trailer causing goods to be moved in interstate commerce used a written form lease, as contemplated by such statute and the rules and regulations of the Interstate Commerce Commission made pursuant thereto, the Courts have held that as a matter of public policy both are to be held liable for damages from its negligent operation. *Carriers Ins. Exchange v. Truck Ins. Exchange*, 310 F. 2d 653 (4th Cir., 1962).

The written lease between Arrow Lines and Bazile was obviously made pursuant to 49 U.S.C.A. 304 (e) and I.C.C. Regulations 207, et. seq.

In *American Trucking Association, Inc. v. United States*, 344 U. S. 298, 73 S. Ct. 307 (1952), the Supreme Court upheld the power of the Interstate Commerce Commission to regulate lease arrangements for augmenting needed equipment, even as to exempt commodities:

> "The exemption extends, by its own words, to carriage of agricultural products, and not to operations where the equipment is used to carry other property." (P. 318).

(b) The non-delegable liability of Arrow Lines exists because it was causing cargo to be moved in commerce in the State of West Virginia.

Without regard to ownership of the tractor-trailer, its operation upon the public highways of the State of West Virginia obligated every person, including Arrow Lines, who undertook, whether directly or by lease or any other arrangement, to transport cargo, as to a primary duty to any member of the public injured by the negligent operation of that motor vehicle and without regard to any collateral or indemnifying agreement.

WEST VIRGINIA MOTOR CARRIER LAW

Code of West Virginia, Chapter 24-A

EFFECTIVE JULY 1, 1961

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

Charleston

ARTICLE 1 — Purposes, Definitions, and Exemptions.

Section 1. Purposes. It is hereby declared to be the purpose and policy of the Legislature in

enacting this law to confer upon the public service commission of West Virginia, in addition to all other powers conferred and duties imposed upon it by law, the power, authority and duty to supervise and regulate the transportation of persons and property for hire by motor vehicles upon or over the public highways of this state so as to: (a) protect the safety and welfare of the traveling and shipping public in their use of transportation agencies by motor vehicles; . . . . This act shall apply to persons and motor vehicles engaged in interstate commerce to the extent permitted by the constitution and laws of the United States.

Section 2. Definitions. When used in this chapter: (a) the term "motor vehicle" means, and includes, any . . . tractor, truck tractor, trailer, semi-trailer . . . (e) the term "common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air and of express or forwarding agencies, and leased or rented motor vehicles, with or without drivers; (f) the term "contract carrier by motor vehicle" means any person not included in subsection (e) of this section, who under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property over the highways in this state by motor vehicles for hire; (g) the term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle; (h) the term "exempt carrier" means any person operating a motor vehicle exempt from the provisions of this chapter under section three hereof; . . . .

Section 3. Exemptions. The provisions of this chapter, except where specifically otherwise provided, shall not apply to: . . .

(3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry, and dairy . . . .

ARTICLE 2—Common Carriers by Motor Vehicles.

Section 1. Subject to Public Utility and Common Carrier Laws. All common carriers by motor vehicle are hereby declared to be affected with a public interest and subject to the laws of this state now in force or that hereafter may be enacted pertaining to public utilities and common carriers as far as applicable, and not in conflict herewith.

and *Henry R. Somerville v. Pennsylvania Railroad Co.*, 155 S. E. 2d 865 (1967) precludes such carrier from delegating its duty and liability to third parties while acting as a carrier in West Virginia.

(c) The liability of Arrow Lines for the negligence of Driver Whitaker exists because he was its borrowed servant.

The liability of Arrow Lines can be predicated upon the "borrowed servant" doctrine, where a servant in the service of one may be transferred for a specific service under the control of another, so as to become the latter's servant for that specific work, and carry the liability for the tort of such servant.

The legal relationships between and among the deceased driver Whitaker, Arrow Lines and Bazile was not an employment for hire relationship between only two (2) legal entitles. The relationship between Bazile and

driver Whitaker was in some aspects that of master-servant and in some aspects agen-principal: the relationship between Arrow Lines and driver Whitaker was the same.

In its inception the relationship between Bazile and the driver was that of master-servant with the concomitant responsibilities and duties incident thereto, but driver Whitaker, in making lease arrangements with others, acted as agent for Bazile, either expressly or by implication of law, and with express or implied authority reasonable and necessary to carry out the purposes of such agency relationship.

Thus, prior to November 22, 1964, the driver, while so driving for Bazile, was his servant and agent. Once the lease was operative, it gave rise to a second and dominant master-servant relationship between the driver and Arrow Lines. This is the true "loaned" or "borrowed" servant rule. This relationship fixes liability for tort upon the master who directs and controls the servant at any specific point in time.

The evidence conclusively shows:

(1) That Bazile did not know where driver Whitaker or the rig was for three, four or five days prior to the collision of November 22, 1964;

(2) That he did not know the nature of the cargo, the point of origin or the cargo or its destination;

(3) That as lessee Arrow Lines accepted the driver and instructed him in applicable laws incident to its operation as a carrier in both interstate and West Virginia commerce;

(4) That it paid him money for expenses, gas, oil, etc.;

(5) That it dispatched him through its employee, William Ferguson, with a copy of the lease agreement aboard;

(6) That it promised to and did insure the trip for public liability purposes;

(7) That it gave him the hauling permits and stickers to put on the rig;

(8) That in the custom of the trade it had control and supervision of the driver until the trip was over;

(9) That it received the report of the collision from the driver, and

(10) That at the conclusion of the trip it received from the driver the delivery receipt and the signs which were used on the truck.

Every essential of control of that driver and that operation vested in Arrow Lines at the time of the collision.

4. FAILURE OF THE COURT TO GIVE ARROW LINES' REQUEST FOR CHARGE NO. 1, IF MADE, WAS NOT OBJECTED TO, OR IF OBJECTED TO WAS CURED BY ARGUMENT OF COUNSEL AND WAS HARMLESS ERROR.

Counsel for Arrow Lines is more emphathetic now concerning his request for charge and objection to refusal thereof than he was at the time the matter came before the Court. At that time the record shows counsel stated that he had no objection to the Court's proposed charge.

Rule 51 provides that "no party may assign as error the giving or failure to give instruction, unless he objects thereto before the jury retires to consider its verdict,

stating distinctly the matter to which he objects and the grounds of his objection". The above recited record shows that no objection was in fact made to the action of the Court on this request for charge of counsel for appellant and that after counsel stated that they had no objection, the Court took the matter up again on is own.

However, even assuming the requisite objection was made, counsel for Arrow Lines waived same when he asked for and received permission of the Court to make and did make a statement to the jury in his closing argument on the matter of the missing Dr. Oscar Weaver.

It is apparent that Dr. Weaver was equally accessible to all parties to the action and not peculiarly available only to the Brammers. Under these circumstances the action of the trial Court in not making any such charge concerning this physician is not an abuse of its judicial discretion. *Morrison v. U. S.*, 365 Fd. 2d 521 (App. D. C. 1966).

In the absence of specific objection of counsel for Arrow Lines to the Court's refusal to charge, and because its counsel did argue the possible inferences to the jury, any refusal to so charge simply does not constitute error, or at most harmless error under Rule 61:

"HARMLESS ERROR

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court

at every state of the proceeding must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties."

CONCLUSION

At the trial of this action, petitioner did not sustain its burden of proving contributory negligence of Barbara Brammer proximately contributing to the collision. Liability for the tort of driver Whitaker is imputable to Arrow Lines on the bases that it caused cargo to be moved *in interstate or intrastate commerce,* and in either event owed a non-delegable duty of care to the Brammers, which was breached, and it was likewise liable for the tort of driver Whitaker by principles of master-servant and principal-agent law which were extant between Arrow Lines and the driver at the time of the collision. The failure of the trial Court to grant a request for a charge, if made, as to a possible jury inference where no specific objection was made is not reversible error, and such verdicts should stand.

Respectfully submitted,

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